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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TWO CONDOMINIUMS LOCATED AT 465  
OCEAN DRIVE, UNITS 315 AND 316,  
MIAMI BEACH, FLORIDA 33139

Defendants.

) CASE NO. 21-CV-04060 CRB

)  
) **OPPOSITION TO CLAIMANTS' MOTION TO**  
) **DISMISS THE UNITED STATES' VERIFIED**  
) **COMPLAINT**

)  
) DATE: September 2, 2021  
) TIME: 10:00 a.m.  
) COURTROOM: #6, 17<sup>th</sup> Floor (Zoom)

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Claimants Zachary Apte (“APTE”), Jessica Richman (“RICHMAN”), and 465 Ocean Land Trust, represented by trustee Gabriel Ceriotti (“the Trust”) (collectively, “Claimants”), join in a motion to dismiss the Verified Complaint for Civil Forfeiture *In Rem* (“the Verified Complaint”). Claimants’ motion lacks any merit. It appears to be a thinly veiled effort to elicit discovery from the government in violation of the Local Civil Rules of Procedure; their demands would require the government to provide discovery far beyond what is required at this juncture. For the reasons stated below, the Verified Complaint satisfies the requirements set forth in Supplemental Rule G of the Federal Rules of Civil Procedure, which governs civil forfeiture proceedings. The Court should accordingly deny Claimants’ motion. If, however, the Court concludes that the Verified Complaint requires amendment to adhere to the requirements set forth in Supplemental Rule G, the Court should grant the government leave to amend the Verified Complaint.

### **II. BACKGROUND**

APTE and RICHMAN were the co-founders of uBiome, Inc. (“uBiome”), a company that purported to test patients’ “microbiomes” with the ostensible purpose of allowing consumers to understand the bacterial composition of their various organ systems. Compl. ¶¶ 8-9, Indictment ¶¶ 17.<sup>1</sup> RICHMAN served as uBiome’s Chief Executive Officer, whereas APTE served as uBiome’s Chief Technology Officer until approximately May 2018, when APTE and RICHMAN began serving as co-Chief Executive Officers. Indictment ¶¶ 3-4. Although uBiome initially offered its products to consumers on the open market, it eventually began offering its products to medical professionals and patients for purposes of clinical medical diagnosis. Indictment ¶ 18.

APTE’s and RICHMAN’s decision to launch uBiome’s products for purposes of establishing clinical diagnoses preceded various actions designed to defraud healthcare providers, healthcare benefit

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<sup>1</sup> Citations to the record in this case are referenced by their respective docket entries (“Dkt. No.”), with the exception of the Verified Complaint, which will be referenced as “Compl.”, and Claimant’s motion, which will be referenced as “Mot.” Any references to an “Indictment” refer to Dkt. No. 1 in *United States v. Zachary Apte and Jessica Richman*, Case No. 21-CR-0116 (N.D. Cal. Mar. 18, 2021).

1 programs, and uBiome investors. First, APTE and RICHMAN submitted reimbursement claims for  
 2 clinical test results on samples that had already been analyzed with a consumer test or older clinical test;  
 3 in other words, they fraudulently submitted multiple reimbursement requests for the same samples.  
 4 Compl. ¶13. APTE and RICHMAN also used a “captive network” of healthcare professionals to  
 5 administer and approve tests. *Id.* This alone was problematic, but even more so because APTE and  
 6 RICHMAN intentionally provided those professionals with limited and misleading information in a  
 7 manner designed to facilitate approval of the requested uBiome tests. *Id.* uBiome also fraudulently  
 8 submitted reimbursement requests for tests that had not been fully approved under applicable medical  
 9 standards; manipulated dates of service to maximize reimbursements; failed to collect patient  
 10 responsibility payments in violation of law and policies of healthcare benefits programs; and used the  
 11 identities of doctors to approve tests without those doctors’ permission. *Id.*

12 uBiome, through APTE and RICHMAN, also raised several rounds of funding with outside  
 13 investors. *See* Compl. ¶¶ 14-15. In doing so, however, APTE and RICHMAN made several  
 14 misrepresentations to investors and deceived them in various material ways, including as to the success  
 15 of uBiome’s collection of healthcare benefit reimbursement rates and revenues; the purported uses and  
 16 clinical acceptance of uBiome’s tests in the medical community; and the legality of uBiome’s business  
 17 practices, especially concerning uBiome’s approach (or lack thereof) in collecting patient responsibility  
 18 payments, the illegal use of a captive network of medical professionals to obtain orders for tests, and the  
 19 marketing and use of “test upgrades.” *Id.* These investments ultimately funded APTE’s and  
 20 RICHMAN’s lifestyles, including the purchase of real estate. Compl. ¶¶ 23. These purchases included  
 21 the purchase of a home in Camas, Washington on or about September 4, 2019. Compl. ¶ 21; Indictment  
 22 ¶ 90. That property was subsequently sold on January 28, 2020, and the proceeds from the sale were  
 23 used to partially purchase two condominiums located at 465 Ocean Drive, Miami Beach, Florida 33139  
 24 (Units 315 and 316) (“the Defendant Properties”). *Id.* The remaining funds used to purchase the  
 25 Defendant Properties were spread over thirteen separate transfers from eight separate financial accounts  
 26 accounts associated with APTE and RICHMAN at numerous banks and other financial institutions.  
 27 Compl. ¶ 22. These transfers culminated in the purchase of the Defendant Properties. Compl. ¶ 23.

28 The government filed the instant Verified Complaint for Civil Forfeiture *In Rem* on May 27,

2021. Dkt. No. 1. APTE and RICHMAN filed their respective claims on July 6, 2021, and the Trust filed its claim on July 8, 2021. Dkt. Nos. 15, 17-18. In accordance with the rules governing civil forfeiture of real property, the government filed its complaint; posted notice of the complaint on the Defendant Property; and served notice and a copy of the complaint on the owner through counsel. *See* Fed. R. Civ. P. Supp. G(3); 18 U.S.C. § 985(c). Each Claimant timely filed their respective motions in accordance with Supplemental Rule of Civil Procedure G(5)(b). APTE's and RICHMAN's activities with respect to their management of uBiome also form the basis for two related actions before the Court, including one criminal action against APTE and RICHMAN, as well as a suit brought by the U.S. Securities and Exchange Commission. *See United States v. Zachary Apte and Jessica Richman*, Case No. 21-CR-0116 (N.D. Cal. Mar. 18, 2021); *SEC v. Richman, et al.*, Case No. 21-CV-01911 (N.D. Cal. Mar. 18, 2021). The criminal indictment contains forfeiture allegations that seek the Defendant Property in addition to a forfeiture money judgment. Indictment ¶¶ 91-95.

### III. LEGAL STANDARD

The procedural aspects of civil forfeiture actions are generally governed by Supplemental Rule G of the Federal Rules of Civil Procedure; to the extent that Rule G does not address issues that may arise, Supplemental Rules C and E apply, along with the other Federal Rules of Civil Procedure. Fed. R. Civ. P. Supp. G(1); *see also United States v. \$50,040 in U.S. Currency*, 2007 WL 1176631, at \*2 (N.D. Cal. Apr. 20, 2007). The sufficiency of a civil forfeiture complaint is governed by the provisions articulated in Supplemental Rule G(2). Fed. R. Civ. P. Supp. G(8)(b)(ii). As with all civil complaints, the allegations in a civil forfeiture complaint are taken as true for purposes of a motion to dismiss, and all allegations must be construed in the light most favorable to the government as the nonmoving party. *\$50,040*, 2007 WL 1176631, at \*2 (citation omitted). Moreover, the government “must be afforded every favorable inference that may be drawn from the allegations of fact set forth in the complaint.” *United States v. One Gulfstream G-V Jet Aircraft*, 941 F. Supp. 2d 1, 14 (D.D.C. 2013) (citations omitted). Claimants with standing to contest civil forfeiture proceedings may move to dismiss a complaint in accordance with Federal Rule of Civil Procedure 12.<sup>2</sup> Fed. R. Civ. P. Supp. G(8)(b)(i).

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<sup>2</sup> Claimants may demonstrate statutory standing in civil forfeiture cases by “showing that they have ‘a colorable interest in the property,’ . . . which includes an ownership interest or a possessory interest[.]” *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 637-38 (9th Cir. 2012)

Generally, to survive a motion to dismiss, a civil complaint must articulate sufficient facts, when accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Claims articulated in complaints are sufficient if “the plaintiff alleges enough facts to draw a reasonable inference that the defendant is liable;” factual allegations accordingly need not be detailed but must provide more than bare legal assertions. *United States v. Real Prop. Located in Brentwood, Cal.*, 2016 WL 11121402, at \*2 (C.D. Cal. Mar. 15, 2016) (quoting *Twombly*, 550 U.S. at 555).

Supplemental Rule G(2) provides a “slightly higher pleading standard” for complaints for civil forfeiture *in rem* than that provided for standard civil complaints in *Twombly* and *Iqbal*. *Id.* (citing *United States v. Aguilar*, 782 F.3d 1101, 1108 (9th Cir. 2015)). Specifically, civil forfeiture complaints must adhere to the following requirements:

The complaint must: (a) be verified; (b) state the grounds for subject-matter jurisdiction, *in rem* jurisdiction over the defendant property, and venue; (c) describe the property with reasonable particularity; (d) if the property is tangible, state its location when any seizure occurred and—if different—its location when the action is filed; (e) identify the statute under which the forfeiture action is brought; and (f) state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.

The Ninth Circuit has noted that few courts have interpreted Supplemental Rule G(2)(f)(6), but that those that have interpreted it read it in conjunction with Supplemental Rule E(2)(a), per the guidance provided in the advisory notes to Supplemental Rule G. *Aguilar*, 782 F.3d at 1108. Supplemental Rule E(2)(a) specifically provides that complaints must “state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.” *Id.*

Notwithstanding Claimants’ daunting recitation of the standard for motions to dismiss in

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(quoting *United States v. 5208 Los Franciscos Way*, 385 F.3d 1187, 1191 (9th Cir. 2004)). Article III standing may be demonstrated by establishing “that the plaintiff suffered an injury in fact, that there is a causal connection between the injury and the conduct complained of, and that it is likely the injury will be redressed by a favorable decision.” *Id.* at 637 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). As statutory standing is demonstrated through “a claimant’s unequivocal assertion of an ownership interest” in the Defendant Property at the motion to dismiss stage, the government recognizes that the Claimants have standing for purposes of their respective motions to dismiss only. *See id.* (citing *United States v. 475 Martin Lane*, 545 F.3d 1134, 1140 (9th Cir. 2008)).

forfeiture proceedings, the Supplemental Rules “do[] not articulate an onerous standard.” *Id.* (citing *United States v. Mondragon*, 313 F.3d 862 (4th Cir. 2002)). Although “notice pleading” does not suffice for civil forfeiture complaints, the standard is nevertheless a “low bar.” *Id.* at 1109 (quoting *United States v. \$191,910.00 in U.S. Currency*, 16 F.3d 1051, 1068 (9th Cir. 1994), *superseded on other grounds*). A civil forfeiture complaint must merely “state[] the circumstances giving rise to the forfeiture claim with sufficient particularity that [the claimant] [can] commence[] a meaningful investigation of the facts and draft[] a responsive pleading,” and “permit a reasonable belief for pleading purposes that [the property in question] ... [is] subject to forfeiture.” *Id.* at 1108-09 (quoting *Mondragon*, 313 F.3d at 866-67).

The standard articulated in *Mondragon* and adopted in *Aguilar* followed from the passage of the Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”). *See Mondragon*, 313 F.3d at 865; *\$50,040*, 2007 WL 1176631, at \*2. Prior to CAFRA, courts nationwide interpreted the standard provided in Supplemental Rule E(a)(2) as probable cause. *Mondragon*, 313 F.3d at 865; *\$50,040*, 2007 WL 1176631, at \*2. The Ninth Circuit continues to hold that the government must “show probable cause to institute a forfeiture action.” *United States v. \$493,850.00 in U.S. Currency*, 518 F.3d 1159, 1166 (9th Cir. 2008). This Court, however, has harmonized the two concepts and has held that, for all intents and purposes, the “decision to omit the words ‘probable cause’ did not change the standard for sufficiency. Whether stated as a ‘reasonable belief that the property is subject to forfeiture’ or a ‘reasonable belief that the government will be able to meet its burden of proof at trial,’ the ultimate meaning is identical.” *\$50,040*, 2007 WL 1176631, at \*2.

For the reasons described below, the Verified Complaint meets this standard without difficulty.

#### IV. ARGUMENT

As noted above, a complaint for civil forfeiture *in rem* is generally considered sufficient if it meets the requirements set forth in Supplemental Rule G(2). Claimants only appear to contest two of the requirements articulated therein: that the complaint was properly verified, and that the complaint “state[s] sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.” Fed. R. Civ. P. Supp. G(2)(f). The government addresses the two issues presented by Claimants *seriatim*.

1           **A.       The Complaint is Verified**

2           Preliminarily, the government must address Claimants’ contention that the verification  
 3 accompanying the complaint for civil forfeiture is deficient because the law enforcement officer  
 4 verifying the complaint attested that they “*believe[d]* the allegations contained [in the complaint] to be  
 5 true.” Mot. at 11 n.7. Claimant’s argument is utterly lacking in merit. Claimants need look no further  
 6 than the dictionary (or their common sense) to conclude that a belief that a fact is true is logically  
 7 necessary to claim or attest that the fact is true. Definitions for the word “believe” include “to regard as  
 8 right or true” or “to accept.” Merriam-Webster Online Dictionary and Thesaurus, *Believe* (2021). The  
 9 word “belief,” the noun attributed to the verb “believe,” is defined, at least in part, as “conviction of the  
 10 truth of some statement or the reality of some being or phenomenon especially when based on  
 11 examination of evidence.” Merriam-Webster Online Dictionary and Thesaurus, *Belief* (2021).

12           Indeed, the verifications discussed in the cases Claimants cite actually use or reference “belief,”  
 13 and those verifications were approved by the respective courts adjudicating that issue. *See Schroeder v.*  
 14 *McDonald*, 55 F.3d 454, 460 n.10 (9th Cir. 1995) (approving a verification that provided that “the facts  
 15 stated in the ... complaint [are] true and correct *as known to me*,” *i.e.*, as believed by the individual  
 16 verifying the complaint (emphasis added)); *United States v. 8 Gilcrease Lane, Quincy, Fla. 32351*, 587  
 17 F. Supp. 2d 133, 139 (D.D.C. 2008) (approving a verification in which the attestation provides  
 18 “everything represented [in the Complaint] is true and correct to *the best of my knowledge and belief*”  
 19 (emphasis added)). The Admiralty and Maritime Local Rules also provide that “[v]erification of every  
 20 pleading, statement of right or interest, or other paper as required by Fed. R. Civ. P. Supp. B, C, D, and  
 21 G shall be upon oath or solemn affirmation, *or* in the form provided by 28 U.S.C. § 1746.” Admir. L.R.  
 22 2-1 (emphasis added).<sup>3</sup> The Local Rules accordingly also provide that verification merely need to be  
 23 upon oath or solemn affirmation, and not necessarily in the exact manner provided for in 28 U.S.C.  
 24 § 1746.

25           The verification is sufficient, and the Court should reject Claimants’ argument.

26  
 27  
 28           <sup>3</sup> The Northern District of California’s Local Admiralty and Maritime Rules apply “to statutory  
 condemnation and forfeiture proceedings analogous to maritime actions *in rem*” governed by  
 Supplemental Rule G. Admir. L.R. 1-2.

**B. The Verified Complaint States Sufficiently Detailed Facts to Support a Reasonable Belief That the Defendant Property is Subject to Forfeiture**

The bulk of Claimants' motion is devoted to the sufficiency of the factual basis for the Verified Complaint. The government will address Claimants' arguments with respect to its claims: one claim under Title 18, United States Code, Section 981(a)(1)(C) ("Proceeds Forfeiture Theory"); and one claim under Title 18, United States Code, Section 981(a)(1)(A) ("Money Laundering Forfeiture Theory"). The government will address each claim in turn.

**1. The Proceeds Forfeiture Theory is Sufficiently Detailed**

"Title 18, United States Code, Section 981(a)(1)(C) subjects any property, real or personal, which constitutes or is derived from proceeds traceable to proceeds of any specified unlawful activity to forfeiture to the United States." Compl. ¶ 28. Specified unlawful activities include, but are not limited to, violations of Title 18, United States Code, Section 1343 (wire fraud); Title 18, United States Code, Section 1347 (healthcare fraud); and Title 15, United States Code, Sections 78j(b) and 78ff, alongside Title 17, Code of Federal Regulations, Section 240.10b-5 (securities fraud). *See* 18 U.S.C. § 1956(c)(7)(A) (cross referencing 18 U.S.C. § 1961(1)), 1956(c)(7)(F); *see also* Compl. ¶¶ 34-36. The elements of the crimes constituting specified unlawful activities for purposes of the Proceeds Forfeiture Theory are defined in the Verified Complaint. Compl. ¶¶ 31-33.

Claimants assert that the Verified Complaint fails to allege that APTE or RICHMAN engaged in a specified unlawful activity. Mot. at 4-11. Claimants specifically contend that the Verified Complaint fails to adequately allege any healthcare fraud, securities fraud, or wire fraud activity, and that there is no allegation that APTE or RICHMAN profited from these activities. Taking all facts and reasonable inferences in favor of the government, Claimants' contentions fail with respect to each category of activity.

**a. Healthcare Fraud**

Claimants assert that the Verified Complaint fails to allege that APTE and RICHMAN never received funds from uBiome as part of their participation in the healthcare fraud scheme. Mot. at 5-6. The Verified Complaint, however, adequately alleges that APTE and RICHMAN did obtain funds from their participation in a healthcare fraud scheme and subsequently used those funds in a manner

culminating in the purchase of the Defendant Property. Preliminarily, Claimants’ argument assumes that the Verified Complaint adequately alleges that APTE and RICHMAN actually participated in healthcare fraud activity. Those activities are indeed clear from the face of the Verified Complaint. As noted therein, APTE and RICHMAN acted with the intent to induce “health insurance providers to pay money to uBiome, all in order to obtain funds for the operations of uBiome,” in a manner that would help them convince investors “that health care providers’ orders for uBiome’s clinical tests were routinely reimbursed by health insurance providers, and to project the appearance to investors that such reimbursable orders were increasing on a monthly basis.” Compl. ¶ 12. The Verified Complaint goes further and specifically defines those practices, which include the fraudulent submission of used samples for testing to obtain additional reimbursements; utilizing a captive network of doctors who were given misleading information to approve tests; masquerading their tests as medically approved when they had not fully been vetted; manipulating dates of service to maximize billings; purposefully skirting their patient responsibility requirements; and using falsified documents containing doctors’ identifying information without permission. Compl. ¶ 13.

With respect to the proceeds of those activities, the Verified Complaint clearly indicates that the proceeds of the healthcare fraud scheme, which first flowed to uBiome, were funneled “from the uBiome account to [APTE’s and RICHMAN’s] personal accounts.” Compl. ¶ 17. The Verified Complaint subsequently explains the transfers of proceeds from investors in connection with the alleged securities fraud, which is detailed further below, as well as transfers from said personal accounts for purposes of purchasing assets which would eventually provide the financing for the Defendant Property. Compl. ¶¶ 18-23. In sum, the allegations outline the activities constituting healthcare fraud; where the funds from the healthcare fraud went, *i.e.*, to APTE’s and RICHMAN’s bank accounts via uBiome; and how they were eventually used to purchase the Defendant Property. The allegations in the Verified Complaint thus provide for a “reasonable belief” that the Defendant Property is subject to forfeiture under the Proceeds Forfeiture Theory with healthcare fraud as a predicate specified unlawful activity. *See Fed. R. Civ. P. Supp. G(2)(f).*

#### **b. Securities Fraud**

Claimants subsequently argue that the Verified Complaint failed to allege any facts tending to

1 prove the elements of a securities fraud claim. Mot. at 6-7. Specifically, Claimants assert that the  
2 Verified Complaint fails to allege any use of instrumentalities of interstate commerce to engage in the  
3 securities fraud activity; and that the substantive aspects of the fraud allegations are “too vague and  
4 conclusory.” *Id.* Claimants’ protestations miss the mark.

5 First, the Verified Complaint specifically integrates instrumentalities of interstate commerce in  
6 its discussion of securities fraud activity. The Verified Complaint makes direct reference to transfers  
7 between and among financial accounts involving wrongfully obtained investments from investors.  
8 Compl. ¶¶ 17-19. The facts alleged with respect to the transfer of funds between financial accounts  
9 clearly establish the interstate commerce element of securities fraud when taking all facts and inferences  
10 in favor of the government. These transfers satisfy the interstate commerce transaction as courts have  
11 held that transfers, whether as wires or movement of funds among bank accounts, necessarily implicate  
12 interstate commerce. *See, e.g., United States v. Zinnel*, 725 F. App’x 453, 460 (9th Cir. 2018)  
13 (explaining that a conviction for money laundering survives the requirement that the transaction affect  
14 interstate commerce if the jury could have inferred that a transaction occurred using a financial  
15 institution insured by the Federal Deposit Insurance Corporation); *United States v. Owens*, 159 F.3d 221,  
16 226 (6th Cir. 1998) (concluding that using a bank that engages in activities affecting interstate  
17 commerce in any manner is sufficient for purposes of establishing that a transaction affected interstate  
18 commerce). This element is not an onerous bar. When accorded every due inference, the Verified  
19 Complaint clearly meets this element.

20 Second, the allegations concerning securities fraud are neither “vague” nor “conclusory.” Mot. at  
21 7. Claimants fail to consider the allegations in the Verified Complaint as a whole and attempt to segment  
22 the Verified Complaint into discrete parts. The Verified Complaint, however, provides more than  
23 enough information when read in its entirety to allow Claimants to “commence[ ] a meaningful  
24 investigation of the facts and draft[ ] a responsive pleading,” and “permit a reasonable belief for  
25 pleading purposes that [the property in question] ... [is] subject to forfeiture.” *Aguilar*, 782 F.3d at 1108-  
26 09 (quoting *Mondragon*, 313 F.3d at 866-67). As Claimants note, paragraph fifteen of the Verified  
27 Complaint provides that APTE and RICHMAN made misleading statements and omissions concerning  
28 uBiome’s business activities, including, but not limited to,

the success of uBiome’s business model in terms of revenues and reimbursement rates; the threats to future revenues represented by uBiome’s failure to collect patient responsibility, marketing of upgrades, and reliance on the ECCN to generate orders; and the lack of clinical utility and acceptance in the medical community of uBiome’s tests.

Compl. ¶ 15. As noted in the preceding two paragraphs of the Verified Complaint, each of these activities were part of APTE’s and RICHMAN’s healthcare fraud scheme and communicated to investors as part of the securities fraud and wire fraud schemes. Compl. ¶ 13.

Claimants nevertheless assert that these two paragraphs are insufficient for the government to meet its standard in a motion to dismiss the Verified Complaint. Mot. at 7. But the caselaw Claimants cite cuts directly against that argument. In *United States v. One White Crystal Covered Bad Tour Glove and Other Michael Jackson Memorabilia*, the Court concluded that the allegations in the Verified Complaint in that case were “vague” and “generalized.” 2012 WL 8455336, at \*3 (C.D. Cal. Apr. 12, 2012). The vagueness of the complaint in *Bad Tour Glove* case was, however, in large part credited to the complaint’s lack of focus on the bad actor who was alleged to have used the proceeds of illegal activity to purchase the property subject to forfeiture. Instead, the activity was ascribed to the “Inner Circle,” an organization with which the defendant was affiliated; the complaint in that case made little reference to the individual alleged to have commit bad acts. *Id.* at \*3-5. The court accordingly concluded that there was no basis upon which to believe that the defendant property was derived from the proceeds of a specified unlawful activity. *Id.*

The other case Claimants cite was based on the same facts as the *Bad Tour Glove* Case. *See One Gulfstream*, 941 F. Supp. 2d at 5-6. The Court took similar issue with the allegations in that complaint: there were no allegations with respect to “what companies were victim to this scheme, or when this occurred, or which members of the Inner Circle were behind the acts.” *Id.* at 15. Many of the allegations did not “even give rise to an inference of illegal activity,” or mention the purported bad actor in any capacity. *Id.* There were apparently allegations in which the purported bad actor was not mentioned or referenced at all, or others simply alleging that the bad actor had amassed wealth—nothing more. *Id.* at 15-16. The court noted that, in that case, “the claimants would find it difficult to know where to begin their investigation, what individuals to interview, or what documents to review.” *Id.* at 16 (citing

1 *Mondragon*, 313 F.3d at 864).

2 The instant case is closer to *United States v. Sum of \$70,990,605*, 4 F. Supp. 3d 189 (D.D.C.  
3 2014). There, the court specifically contrasted the facts of that case to *One Gulfstream* and concluded  
4 that the government had met its burden in demonstrating the sufficiency of the Verified Complaint. *Id.* at  
5 203. The court noted that, in *One Gulfstream*, the government “failed to plead facts showing that the  
6 claimant’s wealth was derived from an illegal source.” *Id.* (citing *One Gulfstream*, 941 F. Supp. 2d at  
7 15-16). In *\$70,990,605*, however, the government plead more than “labels and conclusions.” *Id.* (quoting  
8 *Twombly*, 550 U.S. at 555). The government specifically “identif[ied] dates and amounts,” and  
9 “explain[ed] the claimants’ actions precipitating that seizure.” *Id.* The government did the same here  
10 with respect to each of the allegations by identifying the main actors as APTE and RICHMAN,  
11 explaining the actions underlying the allegations of specified unlawful activity, and the transactions  
12 culminating in the purchase of the Defendant Property.

13 To the extent Claimants demand more information relating to securities fraud, they will be able  
14 to receive said information in discovery. Indeed, “the government is not required to prove its case  
15 simply to get in the courthouse door.” *5208 Los Franciscos Way*, 385 F.3d at 1193. Although the  
16 government has not provided everything Claimants wish to know at this juncture, it need not do so at  
17 this early stage of litigation. The Verified Complaint provides enough detail for Claimants to  
18 preliminarily investigate the allegations discussed therein.

### 19 **c. Wire Fraud**

20 Claimants next assert that the Verified Complaint’s wire fraud allegation fails for similar reasons  
21 as the allegations relating to healthcare and securities fraud. Claimants specifically assert that they lack  
22 sufficient notice of “(1) the nature and purpose of the scheme, (2) the statements and omissions carried  
23 out in furtherance of the scheme, and (3) the interstate or foreign wire communication(s) used to carry  
24 out or attempt to carry out an essential part of the scheme” with respect to wire fraud. Mot. at 5.  
25 Claimants’ argument, however, fails in two familiar respects: it demands more than the Verified  
26 Complaint is required to provide, and it ignores the logical inferences that can be drawn from the  
27 Verified Complaint.  
28

As noted above, the government’s burden at this stage of the proceedings is to “state[ ] the circumstances giving rise to the forfeiture claim with sufficient particularity that [the claimant] [can] commence[ ] a meaningful investigation of the facts and draft[ ] a responsive pleading,” and “permit a reasonable belief for pleading purposes that [the property in question] ... [is] subject to forfeiture.” *Aguilar*, 782 F.3d at 1108-09 (quoting *Mondragon*, 313 F.3d at 866-67). This is not an onerous bar, and the Verified Complaint’s allegations are more than sufficient to meet this standard.

Preliminarily, the wire fraud statute:

prohibits a person who, having devised or intending to devise a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, from transmitting, or causing the transmission of, any writing, sign, signal, picture, or sound by means of wire, radio, or television communication in interstate or foreign commerce for the purpose of executing said scheme or artifice.

Compl. ¶ 33 (citing 18 U.S.C. § 1343). As noted throughout the Verified Complaint, APTE and RICHMAN caused several transfers of funds to be made in furtherance of their scheme to defraud various healthcare benefit programs and investors. Transfers of funds constitute wires for purposes of the wire fraud statute. *See United States v. Cusino*, 694 F.2d 185, 187 (9th Cir. 1982). APTE’s and RICHMAN’s wire fraud scheme encompasses the healthcare and securities fraud schemes described above and includes the purchase of the Defendant Property for their personal benefit at the expense of healthcare benefit programs and investors. The Verified Complaint also explains the paths of the various transfers made to APTE and RICHMAN in furtherance of their schemes, including the transfer of funds to uBiome’s accounts from healthcare benefit programs and investors; transfers of funds from investors to APTE’s and RICHMAN’s personal financial accounts; and the funneling of funds from uBiome to APTE and RICHMAN’s accounts to fund the purchase of real estate for personal use. Compl. ¶¶ 12, 16-19. The Verified Complaint as a whole alleges several iterations of wire fraud and is more than sufficient for Claimants to undertake an investigation into the allegations discussed therein. The Court should accordingly deny Claimants’ motion to dismiss.

#### **d. Proceeds Generally**

Claimants subsequently contend that the Proceeds Forfeiture Theory is fatally flawed in its entirety because the Verified Complaint failed to allege any tie between the Defendant Property and the

proceeds of the schemes described therein. Claimants’ arguments are without merit. The Verified Complaint clearly alleges that, beginning in 2016, “APTE and RICHMAN began funneling funds from the uBiome account to their personal accounts.” Compl. ¶ 17. Prior to that, the Verified Complaint explained how uBiome obtained money through fraudulent means, including wire fraud, healthcare fraud, and securities fraud schemes. Compl. ¶¶ 12-15. The Verified Complaint also explains how the proceeds of these schemes culminated in the purchase of the Defendant Property, via the purchase and sale of a real property in Camas, Washington. Compl. ¶¶ 17-23. The Verified Complaint notes that these funds “were derived, in substantial part, from funds traceable to the specified unlawful activities” described previously in the Verified Complaint. Compl. ¶ 23. This is not a case where the Verified Complaint generally refers to criminal activity and infers, with no factual basis, that the Defendant Property constitutes the proceeds of crime. *See, e.g., United States v. \$1,399,313.74 in U.S. Currency*, 591 F. Supp. 2d 365, 373-74 (S.D.N.Y. 2008) (complaint dismissed where there was no allegation that a bad actor engaged in specified unlawful activity, but mere speculation that property *could* be tied to a specified unlawful activity). The complaint here provides Claimants with ample facts upon which to initiate an investigation.

Claimants’ primary concern regarding the Proceeds Forfeiture Theory is that the Verified Complaint does not provide all of the tracing necessary to establish the forfeitability of the Defendant Property. Claimants’ argument, however, conflates several principles at issue in the context of a motion to dismiss a civil forfeiture complaint. As noted above, the government need not prove the entirety of its case in its Verified Complaint “simply to get in the courthouse door.” *5208 Los Franciscos Way*, 385 F.3d at 1193. To that end, civil forfeiture complaints need not “identify specific property involved in the offense (for example, that the exact dollars that went into the claimants’ account from the fraud were the exact dollars that were seized).” *\$70,990,605*, 4 F. Supp. 3d at 202. Rather, the government must show that the assets are “traceable to a [specified] violation” in far broader terms. *Id.* (quoting 18 U.S.C. § 981(a)(1)(C)). Simply put, “tracing is not at issue at the motion to dismiss stage.” *Aguilar*, 782 F.3d at 1109. *See also Medina-Rodriguez v. \$3,072,266.59 in U.S. Currency*, 471 F. Supp. 3d 465, 481 (D.P.R. 2021) (noting that the government need not demonstrate a full tracing analysis in its complaint, and that traceability is a matter to be resolved at trial); *United States v. Real Prop. Known as 1 W. Century Dr.*

#23B, *L.A., Cal.*, 2018 WL 4599837, at \*4 (S.D. Tex. June 22, 2018) (concluding that a complaint without a tracing analysis is sufficient for purposes of surviving a motion to dismiss); *United States v. All Assets Held in Account No. 80020796*, 83 F. Supp. 3d 360, 379 (D.D.C. 2015) (providing that “the Government is not required to demonstrate full tracing of all account activity” as the “pleading standard for tracing funds in a civil forfeiture complaint is not exacting”).

Claimants’ protestations that the Verified Complaint has provided them with nothing rings hollow in light of the detailed facts the Verified Complaint offers. The Verified Complaint provides specific instances of fraudulent conduct, a timeline, and specific transactions, in addition to an allegation that the fraudulent conduct discussed therein is the specified unlawful activity forming the basis for the Proceeds Forfeiture Theory. To the extent Claimants believe that there is any inference that APTE and RICHMAN purchased the Camas property with legitimate funds, that is something Claimants are free to explore at trial or on a motion for summary judgment, after discovery begins. The Verified Complaint, however, alleges a viable Proceeds Forfeiture Theory and is more than sufficient to survive a Claimants’ motion to dismiss.

## **2. The Money Laundering Forfeiture Theory is Sufficiently Detailed**

Claimants next argue that the Money Laundering Forfeiture Theory is fatally flawed because the Verified Complaint fails to establish that APTE and RICHMAN (1) engaged in specified unlawful activities; and (2) used the proceeds of those activities to conceal the nature, location, source, ownership, or control of the proceeds of said specified unlawful activities. Mot. at 12; *see also* 18 U.S.C. § 1956(a)(1)(B)(i). These arguments, like the others, are without merit.

Preliminarily, “Title 18, United States Code, Section 981(a)(1)(A) subjects any property, real or personal, involved in a transaction in violation of Title 18, United States Code, Section 1956 (money laundering) to forfeiture to the United States.” Compl. ¶ 27. As described above, the Verified Complaint adequately alleges that APTE and RICHMAN engaged in specified unlawful activities giving rise to money laundering, specifically, wire fraud, healthcare fraud, and securities fraud schemes. *See, e.g.*, Compl. ¶¶ 12-13, 15; *see also* 18 U.S.C. §§ 1956(c)(7), 1961(1) (discussing what offenses constitute specified unlawful activities). The Verified Complaint further alleges that APTE and RICHMAN both funneled money from uBiome’s accounts and received ill-gotten gains into their personal bank accounts.

1 Compl. ¶¶ 16-17. Claimants’ assertions with respect to the specified unlawful activities and  
 2 accompanying proceeds are lacking for the same reason as their arguments concerning the Proceeds  
 3 Forfeiture Theory—the allegations are more than sufficient to establish a reasonable belief that the  
 4 Defendant Property is subject to forfeiture.

5 Claimants’ other argument concerning the Money Laundering Forfeiture Theory is that the  
 6 Verified Complaint fails to allege that the purpose of the series of the real estate transactions described  
 7 therein was to conceal the nature of the proceeds of the specified unlawful activities. Mot. at 12-13.  
 8 This, too, is misplaced. Preliminarily, transactions that are designed to conceal the nature or source of  
 9 property may, and typically do, have multiple purposes. *See United States v. Mehmood*, 742 F. App’x  
 10 928, 935-36 (6th Cir. 2018) (concluding that payments for kickbacks were routed, “at least partially,” to  
 11 conceal the nature of the funds based on factual inferences, even if the funds were used for other  
 12 purposes); *United States v. Chang*, No. 16-CR-0047 EJD, 2020 WL 5702131, at \*8-9 (N.D. Cal. Sept.  
 13 24, 2020) (citing *United States v. Wilkes*, 662 F.3d 524, 545 (9th Cir. 2011)) (concluding that money  
 14 was being transferred through charity accounts both to pay defendant’s personal expenses *and* to cleanse  
 15 the taint from the money being transferred).

16 Implicit in those holdings is that the purpose of concealment may be inferred from the  
 17 circumstances surrounding money laundering transactions. Indeed, in *United States v. Walton*, the Ninth  
 18 Circuit affirmed a money laundering conspiracy conviction on the basis that the defendant had “used a  
 19 method typically employed by money launderers to conceal the source of funds.” 745 F. App’x 15, 16  
 20 (9th Cir. 2018). The D.C. Circuit has also held that money launderers use several standard techniques to  
 21 conceal the source, nature, or location of illegally-obtained funds: “‘funneling’ of ‘illegal funds through  
 22 various fictitious business accounts’ is a hallmark of money laundering.” *United States v. Bikundi*, 926  
 23 F.3d 761, 784 (D.C. Cir. 2019) (quoting *United States v. Adefehinti*, 510 F.3d 319, 323 (D.C. Cir.  
 24 2007)). Other techniques include “convoluted financial transactions” and “inter-company transfers with  
 25 no clear purpose.” *Id.* (internal quotation marks omitted); *see also Wilkes*, 662 F.3d at 545-56 (quoting  
 26 *Adefehinti*, 510 F.3d at 324) (referencing “convoluted transactions” as a hallmark of concealment money  
 27 laundering).

28 The Verified Complaint explicitly alleges several of the “hallmarks of money laundering”

described in *Bikundi*, *Wilkes*, and *Adefehinti*. RICHMAN and APTE, for example, used a uBiome business account as a “funnel” to their own respective personal accounts. Compl. ¶ 17. RICHMAN and APTE subsequently formed a series of trusts and used the first of those trusts to purchase property in October 2017 with funds they derived from specified unlawful activities, *i.e.*, wire fraud, healthcare fraud, and securities fraud. Compl. ¶¶ 20-21. The property later was sold and used as partial payment for the Defendant Property; the remaining funds were transferred from *eight separate financial accounts in thirteen transactions*, through trusts and the use of an intermediary. Compl. ¶¶ 22-23. Activity after APTE and RICHMAN left the country also indicates that they continued their money laundering activities, including directing the transfer of money through intermediary individuals for use in construction on the Defendant Properties. Compl. ¶ 24. These facts are more than enough to allow Claimants to “commence[ ] a meaningful investigation of the facts and draft[ ] a responsive pleading,” and “permit a reasonable belief for pleading purposes that [the property in question] ... [is] subject to forfeiture.” *Aguilar*, 782 F.3d at 1108-09 (quoting *Mondragon*, 313 F.3d at 866-67).

### 3. Leave to Amend is Appropriate if the Court Concludes that the Verified Complaint Requires Additional Detail

The Court should deny Claimants’ motion to dismiss. If, however, the Court determines that the Verified Complaint is insufficient in any respect, the Court should dismiss without prejudice and grant the government leave to amend the Verified Complaint. Federal Rule of Civil Procedure 15 provides that “leave shall be freely given when justice so requires.” This Rule applies in the context of motions to dismiss. “[D]ismissal with prejudice is warranted only when a trial court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *\$70,990,605*, 4 F. Supp. 3d at 195 n.1 (quoting *Belizan v. Hershon*, 434 F.3d 579, 583 (D.C. Cir. 2006)). Although the decision to allow leave to amend is ultimately at the Court’s discretion, “[i]t is the usual practice upon granting a motion to dismiss to allow leave to replead.” *\$1,399,313.74 in U.S. Currency*, 591 F. Supp. 2d at 376 (quoting *Cortec Indus., Inc. v. Sun Holding L.P.*, 949 F.2d 42, 48 (2d Cir. 1991)). Indeed, “[l]eave to amend is almost always allowed to cure deficiencies” in pleadings. *Id.* Amendment at this stage of the proceedings would cure any deficiency the Court may identify. The Court should accordingly allow the government leave to amend should it deem dismissal appropriate at this juncture.

## V. CONCLUSION

The Court should deny Claimant’s motion to dismiss. The Verified Complaint provides more than enough information to allow Claimants to “commence[ ] a meaningful investigation of the facts and draft[ ] a responsive pleading.” *Aguilar*, 782 F.3d at 1108-09 (quoting *Mondragon*, 313 F.3d at 866-67). There is abundant information in the Verified Complaint establishing a “reasonable belief” that the Defendant Property is subject to forfeiture. *Id.* The Court should accordingly deny Claimants’ clear attempt at obtaining discovery prior to the timelines established in the Local Rules. Should the Court conclude, however, that the Verified Complaint is deficient in any respect, the government respectfully requests that the Court grant the government leave to amend the Verified Complaint.

DATED: August 9, 2021

Respectfully submitted,

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/s/  
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